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**TO:** Examiner ESCALANTE, **FAX NO.:** 571-273-8300  
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USPTO GPAU 2645

**FROM:** Jeffrey G. Toler  
Reg. No.: 38,342

**RE U.S. App. No.:** 10/714,585, filed November 14, 2003

**Applicant(s):** Brian K. Hollowell, et al.

**Atty Dkt No.:** 1033-MS1008

**Title:** SYSTEM AND METHOD FOR SIMPLE UNIFIED MESSAGING

**NO. OF PAGES (including Cover Sheet):** 29

### **MESSAGE:**

Attached please find:

- ☒ Transmittal Form (1 pg)
- ☒ Fee Transmittal Form (in duplicate) (2 pgs)
- ☒ Brief in Support of Appeal (25 pgs)

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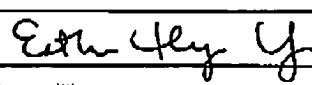
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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/714,585	
	Filing Date	November 14, 2003	
	First Named Inventor	Brian K. Hollowell	
	Art Unit	2645	
	Examiner Name	ESCALANTE, Ovidio	
Total Number of Pages in This Submission	29	Attorney Docket Number	1033-MS1008

ENCLOSURES (Check all that apply)		
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<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	10/714,585
		Filing Date	November 14, 2003
		First Named Inventor	Brian K. Hollowell
		Examiner Name	ESCALANTE, Ovidio
		Art Unit	2645
<b>TOTAL AMOUNT OF PAYMENT</b> (\$) 500.00		Attorney Docket No.	1033-MS1008

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Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
<b>Total Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
<b>Indep. Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

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Name (Print/Type)	Jeffrey G. Toler	Date	5-31-2006

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For FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500.00

**Complete if Known**

Application Number	10/714,585
Filing Date	November 14, 2003
First Named Inventor	Brian K. Hollowell
Examiner Name	ESCALANTE, Ovidio
Art Unit	2645
Attorney Docket No.	1033-MS1008

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☒ Deposit Account Deposit Account Number: 50-2469 Deposit Account Name: TOLER SCHAFFER, LLP

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	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
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Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

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HP = highest number of total claims paid for, if greater than 20.		
<b>Indep. Claims</b>		
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Other (e.g., late filing surcharge): Appeal Brief

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Name (Print/Type)	Jeffrey G. Toler	Date	5-31-2006

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): **Brian K. Hollowell et al.**

Title: **SYSTEM AND METHOD FOR SIMPLE UNIFIED MESSAGING**

App. No.: **10/714,585**

Filed: **November 14, 2003**

Examiner: **Ovidio Escalante**

Group Art Unit: **2645**

Atty. Dkt. No.: **1033-MS1008**

Confirmation No.: **1674**

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**BRIEF IN SUPPORT OF APPEAL**

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## PATENT

<b>I.</b>	<b>REAL PARTY IN INTEREST (37 C.F.R. § 41.37(C)(1)(I))</b>	<b>1</b>
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A.	Total Number of Claims in Application	1
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**I. REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))**

The Real Party in Interest in the present Appeal is **SBC Knowledge Ventures, L.P.**, the assignee, of patent application no. 10/714,585, as evidenced by the assignment set forth at Reel 14493, Frame 0872.

**II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(1)(ii))**

With respect to other appeals or interferences that will directly affect or be directly affected by, or that will have a bearing on the Board's decision in this appeal, Appellant is not aware of any such appeals or interferences.

**III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(1)(iii))****A. Total Number of Claims in Application**

There are 27 claims pending in the application (claims 1-4, 6-19, 21-27, 29 and 30).

**B. Status of All the Claims**

Claims 1, 11, 21, and 29 are independent claims. According to paragraphs 5 and 6 of the Office Action dated January 11, 2006, the Examiner states that Claims 1-4, 6-19, 21-27, 29 and 30 stand rejected, and are hereby appealed. The claims do not stand or fall together. Claims 5, 20, and 28 were canceled without prejudice or disclaimer in the Amendment filed October 19, 2005.

**C. Claims on Appeal**

There are 27 claims on appeal (claims 1-4, 6-19, 21-27, 29 and 30).

**IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))**

The claims hereby Appealed are based on the Amendment filed October 19, 2005. No amendment was offered or entered after the Final Office Action.

**V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))**

The subject matter of Claim 1 can be summarized as follows:

A messaging method includes receiving an indication of a call from a calling party to a called party, where the call is a Voice over Internet Protocol call. The call is answered at a premises of the called party, the calling party is prompted to leave a message, and at least a portion of the message is saved as an audio file. The method also includes recognizing that the calling party left the message. An outgoing message is prepared in response to recognizing that the calling party left the message and the audio file is attached to the outgoing message. The outgoing message is addressed to a network node associated with a unified messaging mailbox of the called party. Sending of the message and the audio file from the premises to the network node is initiated.

Claim 1 finds support, for example, from at least FIGS. 4 and 5 and page 4 paragraph 0009, page 5 paragraph 0012 through paragraph 0015, page 5 paragraph 0016 through page 7 paragraph 0021, page 9 paragraph 0029, page 9 paragraph 0030 through page 12 paragraph 0037, and page 12 paragraph 0038 through page 13, paragraph 0040 of the specification.

The subject matter of Claim 11 can be summarized as follows:

A messaging system includes a housing component at least partially defining an enclosure, a network interface, a call awareness trigger, a call answering mechanism, a memory, a messaging engine, and a Voice over Internet Protocol engine. The call awareness trigger is operable to form at least a portion of a communication link between a remote node of a network and a component located within the enclosure. The call awareness trigger is communicatively coupled to the network interface and operable to recognize a signal indicating an incoming call from a calling party. The call answering



mechanism is operable to answer the incoming call and to prompt the calling party to leave a message. The memory is operable to store an audio file representing the message. The messaging engine is operable to compose an outgoing message, to attach the audio file to the outgoing message, and to initiate communication of the outgoing message to a remote messaging server. The Voice over Internet Protocol engine is communicatively coupled to the network interface.

Claim 11 finds support, for example, from at least FIGS. 4 and 5 and page 4 paragraph 0009, page 5 paragraph 0012 through paragraph 0015, page 5 paragraph 0016 through page 7 paragraph 0021, page 9 paragraph 0029, page 9 paragraph 0030 through page 12 paragraph 0037, and page 12 paragraph 0038 through page 13, paragraph 0040 of the specification.

The subject matter of Claim 21 can be summarized as follows:

A method of facilitating unified messaging includes communicatively coupling a messaging device to a premises network communicatively coupled to a wide-area communication network. A telephone station at the premises is communicatively coupled to the messaging device. A computer is communicatively coupled to the messaging device. The messaging device is employed to answer an incoming telephone call from a calling party, to play a pre-recorded message that prompts the calling party to leave a message, to record a voice message from the calling party, to compose an electronic mail message in response to the voice message, to attach an audio file representing the voice message to the electronic mail message, and to initiate sending of the electronic mail message via the wide-area communication network, where the incoming telephone call is a Voice over Internet Protocol call.

Claim 21 finds support, for example, from at least FIGS. 4 and 5 and page 4 paragraph 0009, page 5 paragraph 0012 through paragraph 0015, page 5 paragraph 0016 through page 7 paragraph 0021, page 9 paragraph 0029, page 9 paragraph 0030 through page 12 paragraph 0037, and page 12 paragraph 0038 through page 13, paragraph 0040 of the specification.

The subject matter of Claim 29 can be summarized as follows:

A computer-readable medium includes computer-readable data to answer an incoming telephone call from a calling party, to play a pre-recorded message that prompts the calling party to leave a message, to record a voice message from the calling party, to compose an electronic mail message in response to the voice message, to attach an audio file representing the voice message to the electronic mail message, and to initiate sending of the electronic mail message; where the incoming telephone call comprises a Voice over Internet Protocol call.

Claim 29 finds support, for example, from at least FIGS. 4 and 5 and page 4 paragraph 0009, page 5 paragraph 0012 through paragraph 0015, page 5 paragraph 0016 through page 7 paragraph 0021, page 9 paragraph 0029, page 9 paragraph 0030 through page 12 paragraph 0037, and page 12 paragraph 0038 through page 13, paragraph 0040 of the specification.

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. § 41.37(c)(1)(vi))**

Claims 1-4, 6-19, 21-27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,341,160 ("Tverskoy") in view of U.S. Patent Publication No. 2004/0072544 ("Alexis").

**VII. ARGUMENT (37 C.F.R. § 41.37(c)(1)(vii))**

Appellant respectfully appeals each of the rejections applied against all claims now pending on appeal. The independent claims do not stand or fall together.

**A. CLAIMS 11-19 ARE ALLOWABLE OVER THE ASSERTED COMBINATION OF TVERSKOY AND ALEXIS**

Appellant traverses the rejection of claims 11-19 under 35 U.S.C. §103(a) over the asserted combination of U.S. Patent No. 6,341,160 ("Tverskoy") and U.S. Patent Publication No. 2004/0072544 ("Alexis") at page 3, paragraph 5 of the Final Office Action.

The rejection of claim 11 (at pages 5-6, paragraph 5 of the Final Office Action) is based on language not recited by claim 11. Claim 11 does not recite "wherein the call comprises a VoIP call," as asserted in the Final Office Action. *See Final Office Action*, p. 6, paragraph 5. Instead, claim 11 recites a messaging system including a Voice over Internet Protocol engine communicatively coupled to the network interface. Tverskoy simply fails to disclose or suggest this feature.

The Final Office Action asserts that Alexis discloses a Voice over Internet Protocol (VoIP) call. *See Final Office Action*, p. 6, paragraph 5. However, the Final Office Action acknowledges that combining a VoIP feature with the answering machine of Tverskoy would not be obvious in light of Alexis. *See Final Office Action*, p. 10, paragraph 6. Specifically, the Final Office Action states:

the Examiner agrees that combining [sic] a VoIP feature to the answering machine [of Tverskoy] would not have been obvious in light of Alexis...

*See Final Office Action*, p. 10, paragraph 6, lines 4-5 (emphasis added).

In light of the admission in the Final Office Action, at page 10, that the asserted combination would not have been obvious, the Final Office Action fails to establish a prima facie case of obviousness. Accordingly, the rejection of claim 11 is improper and should be withdrawn.

Moreover, the cited references (Tverskoy and Alexis) fail to disclose or suggest a motivation to modify the answering machine of Tverskoy to include a Voice over Internet Protocol (VoIP) feature. Tverskoy discloses an answering machine (*See Tverskoy*, Abstract), but fails to disclose or suggest VoIP calls. Alexis discloses a real-time communication system (*See Alexis*, Abstract), but fails to disclose or suggest a basis for combining the real-time communication system with the answering machine of Tverskoy. Moreover, the real-time communication system of Alexis fails to disclose or suggest an answering machine feature, suggesting instead that if the called party does not answer, the calling party hangs up and the communication device is placed in an on-hook state. *See Alexis*, p. 4, paragraph 0040. Accordingly, the cited references fail to provide any suggestion or motivation to make the asserted combination.

Additionally, the answering machine of Tverskoy is technically inconsistent with the real-time communication system of Alexis. The answering machine of Tverskoy allows a user to retrieve a message at a later time ("the user may access his or her email account 31 at [Internet Service Provider] ISP 30 at any time from personal computer 32 to check for new messages." *See Tverskoy*, col. 5, lines 41-43.). This time-shifting aspect of the answering machine of Tverskoy would be thwarted by the real-time communication system of Alexis. In particular, the real-time communication system of Alexis requires both the calling party and the called party to be available at the time of the call. *See Alexis*, p. 2, paragraph 30. Alexis discloses:

If the called party answers, communication such as conversation may begin. If the called party does not answer, the calling party hangs up and communication device 102 is then in an on-hook state.

*See Alexis*, p. 4, paragraph 0040.

By contrast, Tverskoy records and sends a voicemail to the user, precisely because the user is not available to answer a call. The cited references fail to provide a suggestion or motivation to make the asserted combination. Therefore, the asserted combination of the real time communication system of Alexis with the answering machine of Tverskoy is an impermissible hindsight reconstruction based on the present application. Accordingly, the Examiner has failed to meet his burden or provide any basis to support a prima facie case of obviousness.

Thus, the asserted combination of Tverskoy and Alexis is not obvious, is not motivated by any suggestion contained within the reference, requires modification of the Tverskoy device in a way that is not suggested or taught by the references, and requires ignoring technical inconsistencies that would not inspire a worker skilled in the art to make the asserted combination. Accordingly, the asserted combination is improper. Moreover, in light of the acknowledgment in the Final Office Action that modifying the answering machine of Tverskoy to include a VoIP feature would not have been obvious in light of Alexis (*See Final Office Action*, p. 10, paragraph 6, lines 4-5), the Final Office Action fails to establish a prima facie case of obviousness with respect to claim 11 based on the asserted combination of Tverskoy and Alexis. Accordingly, the rejection of claim 11 over the asserted combination of Tverskoy and Alexis is improper, and should be withdrawn.

Claim 11 is allowable over the asserted combination of Tverskoy and Alexis, and claims 12-19 are allowable over the asserted combination of Tverskoy and Alexis, at least by virtue of their dependency from allowable claim 11. Accordingly, the rejection of claims 11-19 is improper and should be withdrawn. Reconsideration and notice to that effect is requested.

**B. CLAIMS 1-4 AND 6-10 ARE ALLOWABLE OVER THE ASSERTED COMBINATION OF TVERSKOY AND ALEXIS**

Appellant traverses the rejection of claims 1-4 and 6-10 under 35 U.S.C. §103(a) over the asserted combination of U.S. Patent No. 6,341,160 ("Tverskoy") and U.S. Patent Publication No. 2004/0072544 ("Alexis") at page 3, paragraph 5 of the Final Office Action.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *M.P.E.P.* §2143. Additionally, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Final Office Action acknowledges that combining a VoIP feature of Alexis with the answering machine of Tverskoy would not have been obvious in light of Alexis. *See Final Office Action*, p. 10, paragraph 6. However, the Final Office Action states that the VoIP call is from a calling party and therefore it is the calling party's device that has the VoIP feature. *See Final Office Action*, p. 10, paragraph 6.

However, Appellant notes that the answering machine of Tverskoy is not equipped to receive VoIP calls. Tverskoy discloses that the answering machine is capable of transmitting and receiving information over a plain old telephone service (POTS) line or an Integrated Services Digital Network (ISDN) line. *See Tverskoy*, col. 2, lines 23-38. Tverskoy discloses that the answering machine may call an Internet service provider (ISP) via the public switched telephone network to access the user's email account. *See Tverskoy*, col. 2, lines 39-47. However, Tverskoy fails to disclose or suggest an answering machine that is capable of answering a VoIP call. The Final Office Action asserts:

The answering machine of Tverskoy in [sic] not modified in any way with the VoIP feature. Since it is well known in the art to use VoIP to initiate calls as taught by Alexis then the Examiner believes that it would have been obvious to allow the caller of Tverskoy to initiate a call using VoIP to call the called party of Tverskoy...

*See Final Office Action*, p. 10, paragraph 6 (emphasis added).

The assertion of the Final Office Action is contrary to the language of the claims. Claim 1 recites a messaging method that includes receiving an indication of a call from a calling party

to a called party and answering the call at a premises of the called party, where the call comprises a Voice over Internet Protocol call. Appellant notes that claim 1 is directed to answering a VoIP call. Whether or not a caller may initiate a VoIP call is irrelevant to whether the answering machine of Tverskoy can answer a VoIP call. Further, the answering machine of Tverskoy is not equipped to send or receive VoIP calls.

Contrary to the assertion in the Final Office Action that the answering machine of Tverskoy is not modified in any way, the asserted combination requires combining a VoIP feature to the answering machine of Tverskoy, which the Final Office Action acknowledges would not have been obvious in light of Alexis. *See Final Office Action*, p. 10, paragraph 6, lines 4-5. Thus, the asserted combination of Tverskoy and Alexis would not have been obvious in light of the disclosures of Tverskoy and Alexis, and the rejection of independent claim 1 over the asserted combination of Tverskoy and Alexis is improper and should be withdrawn.

Moreover, Tverskoy is directed to an answering machine to store a voice message from a caller and to transmit messages to a remotely accessible user account. *See Tverskoy*, Abstract. Tverskoy discloses that the answering machine includes a control system to call an Internet service provider (ISP) of the user, to transmit a user name and password to the ISP, and to generate an email message associated with a voice message, including an attachment containing a digital representation of the voice message. *See Tverskoy*, col. 3, line 13-31, col. 4, line 15-31, col. 4, line 19-21, and col. 4 line 62- col. 5, line 4. However, the Final Office Action acknowledges that Tverskoy does not teach that the call comprises a Voice over Internet Protocol (VoIP) call. *See Final Office Action*, p. 3, paragraph 5.

By contrast, Alexis is directed to a communication device for hosting land-line, wireless and Internet telephone calls. *See Alexis*, Abstract. Alexis discloses a communication system 100 that allows a user to place a call over a public switched telephone network or over a wireless communication network by entering a predetermined code (*See Alexis*, p. 3, paragraph 0032) or based on an automatic determination by the interface circuitry (*See Alexis*, p. 3, paragraph 0033). Alexis discloses interface circuitry that connects the communication device for a public switched telephone network call or for a wireless network call in response to the input of a predetermined code before or after the user enters a telephone number. *See Alexis*, p. 4, paragraph 0041. Alexis

states that a user may place three types of calls: a landline (public switched telephone network) call, a wireless network call, and a Voice over Internet Protocol call. *See Alexis*, p. 6, paragraphs 0049 and 0051.

While *Alexis* discloses interface circuitry to transmit and receive Voice over Internet Protocol (VoIP) calls, *Alexis* is directed to an entirely different problem than *Tverskoy*, namely real-time communications (*Alexis*) as compared to answering machine message access (*Tverskoy*). *Alexis* is directed to facilitating two way real-time communications between the user and a caller over a public switched telephone network, over wireless communications networks, and via the Internet. *See Alexis*, Abstract, p. 1, paragraphs 0004 and 0007, p. 2, paragraph 0030, p. 4, paragraph 0041, p. 6, paragraphs 0049-0051, and p. 15, paragraph 0165, for example. *Alexis* discloses that either the called party answers or the calling party hangs up. *See Alexis*, p. 4, paragraph 0040. By contrast, *Tverskoy* is directed to providing user access to voice mail messages. *See Tverskoy*, Abstract, col. 1, lines 6-9, col. 3 line 47 through col. 5, line 13.

Neither *Tverskoy* nor *Alexis* provide any motivation to make the asserted combination. *Tverskoy* fails to disclose or suggest VoIP calls. *Alexis* fails to disclose or suggest a motivation to modify the answering machine of *Tverskoy*. Accordingly, the cited references fail to provide any suggestion or motivation to make the asserted combination.

Additionally, the answering machine of *Tverskoy* is technically inconsistent with the real-time communication system of *Alexis*. A person of ordinary skill in the art would not be motivated to look to the real-time communications system of *Alexis* to modify the answering machine of *Tverskoy*. The answering machine of *Tverskoy* allows a user to retrieve a message at a later time. This time-shifting aspect of the answering machine of *Tverskoy* would be thwarted by the real-time communication system of *Alexis*. In particular, the real-time communication system of *Alexis* requires both the calling party and the called party to be available at the time of the transmission. By contrast, *Tverskoy* records and sends a voicemail to the user, precisely because the user is not available to answer a call at that moment.



The Final Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the answering machine of Tverskoy by providing Voice over Internet Protocol (VoIP) calls as taught by Alexis "so that the cost for the call can be lowered when compared with conventional telephone calls." *See Final Office Action*, p. 4, paragraph 5. However, Appellant notes that Tverskoy is directed to an answering machine, and the cost of the call would largely be irrelevant to the answering machine of Tverskoy, since a called party would not be concerned with the cost of the received call. The suggested motivation provided by the Final Office Action does not provide a reasonable basis for modifying the answering machine of Tverskoy.

The cited references fail to provide a suggestion or motivation to make the asserted combination. Further, Tverskoy and Alexis are technically inconsistent. Thus, the asserted combination of the real-time communication system of Alexis with the answering machine of Tverskoy is an impermissible hindsight reconstruction based on the disclosure of present application. Therefore, the Examiner has failed to meet his burden or to provide any basis to support a *prima facie* case of obviousness, and the rejection of claim 1 over the asserted combination of Tverskoy and Alexis should be withdrawn. Reconsideration and notice to that effect is requested.

Claim 1 is allowable over the asserted combination of Tverskoy and Alexis. Therefore, claims 2-4 and 6-10 are allowable, at least by virtue of their dependency from allowable claim 1.

**C. CLAIMS 21-27 ARE ALLOWABLE OVER THE ASSERTED COMBINATION OF TVERSKOY AND ALEXIS**

Appellant traverses the rejection of claims 21-27 under 35 U.S.C. §103(a) over the asserted combination of U.S. Patent No. 6,341,160 ("Tverskoy") and U.S. Patent Publication No. 2004/0072544 ("Alexis") at page 3, paragraph 5 of the Final Office Action.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *M.P.E.P.* §2143. Additionally, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Final Office Action acknowledges that combining a VoIP feature to the answering machine would not have been obvious in light of Alexis. *See Final Office Action*, p. 10, paragraph 6. However, the Final Office Action states that the VoIP call is from a calling party and therefore it is the calling party's device that has the VoIP feature. *See Final Office Action*, p. 10, paragraph 6. However, Appellant notes that the answering machine of Tverskoy is not equipped to receive VoIP calls. Tverskoy discloses that the answering machine is capable of transmitting and receiving information over a plain old telephone service (POTS) line or an Integrated Services Digital Network (ISDN) line. *See Tverskoy*, col. 2, lines 23-38. Tverskoy discloses that the answering machine may call an Internet service provider (ISP) via the public switched telephone network to access the user's email account. *See Tverskoy*, col. 2, lines 39-47. However, Tverskoy fails to disclose or suggest an answering machine that is capable of answering VoIP calls. The Final Office Action asserts:

The answering machine of Tverskoy in [sic] not modified in any way with the VoIP feature. Since it is well known in the art to use VoIP to initiate calls as taught by Alexis then the Examiner believes that it would have been obvious to allow the caller of Tverskoy to initiate a call using VoIP to call the called party...

*See Final Office Action*, p. 10, paragraph 6 (emphasis added).

Claim 21 recites a method of facilitating unified messaging that includes employing a messaging device to answer an incoming telephone call from a calling party, where the call comprises a Voice over Internet Protocol call. Appellant notes that claim 21 is directed to answering a VoIP call. Whether or not a caller may initiate a VoIP call is irrelevant to whether the answering machine of Tverskoy can answer a VoIP call. The answering machine of Tverskoy is not equipped to send or receive VoIP calls.

Contrary to the assertion in the Final Office Action that the answering machine of Tverskoy is not modified in any way, the asserted combination requires combining a VoIP

feature to the answering machine of Tverskoy, which the Final Office Action acknowledges would not have been obvious in light of Alexis. *See Final Office Action*, p. 10, paragraph 6, lines 4-5. Thus, the asserted combination of Tverskoy and Alexis would not have been obvious in light of the disclosures of Tverskoy and Alexis, and the rejection of independent claim 21 over the asserted combination of Tverskoy and Alexis is improper and should be withdrawn.

Moreover, Tverskoy is directed to an answering machine to store a voice message from a caller and to transmit messages to a remotely accessible user account. *See Tverskoy*, Abstract. Tverskoy discloses that the answering machine includes a control system to call an Internet service provider (ISP) of the user, to transmit a user name and password to the ISP, and to generate an email message associated with a voice message, including an attachment containing a digital representation of the voice message. *See Tverskoy*, col. 3, line 13-31, col. 4, line 15-31, col. 4, line 19-21, and col. 4 line 62- col. 5, line 4. However, the Final Office Action acknowledges that Tverskoy does not teach that the call comprises a Voice over Internet Protocol (VoIP) call. *See Final Office Action*, p. 3, paragraph 5.

By contrast, Alexis is directed to a communication device for hosting land-line, wireless and Internet telephone calls. *See Alexis*, Abstract. Alexis discloses a communication system 100 that allows a user to place a call over a public switched telephone network or over a wireless communication network by entering a predetermined code (*See Alexis*, p. 3, paragraph 0032) or based on an automatic determination by the interface circuitry (*See Alexis*, p. 3, paragraph 0033). Alexis discloses interface circuitry that connects the communication device for a public switched telephone network call or for a wireless network call in response to the input of a predetermined code before or after the user enters a telephone number. *See Alexis*, p. 4, paragraph 0041. Alexis states that a user may place three types of calls: a landline (public switched telephone network) call, a wireless network call, and a Voice over Internet Protocol call. *See Alexis*, p. 6, paragraphs 0049 and 0051.

While Alexis discloses interface circuitry to transmit and receive Voice over Internet Protocol (VoIP) calls, Alexis is directed to an entirely different problem than Tverskoy, namely real-time communications (Alexis) versus voice-mail message access (Tverskoy). Alexis is directed to facilitating two way real-time communications between the user and a caller over a

public switched telephone network, over wireless communications networks, and via the Internet. *See Alexis*, Abstract, p. 1, paragraphs 0004 and 0007, p. 2, paragraph 0030, p. 4, paragraph 0041, p. 6, paragraphs 0049-0051, and p. 15, paragraph 0165, for example. By contrast, Tverskoy is directed to providing user access to voice mail messages. *See Tverskoy*, Abstract, col. 1, lines 6-9, col. 3 line 47 through col. 5, line 13.

Neither Tverskoy nor Alexis provide any motivation to make the asserted combination. Tverskoy fails to disclose or suggest VoIP calls. The real-time communication system of Alexis fails to disclose any type of voice messages, except in the context of instant messages. Accordingly, the cited references fail to provide any suggestion or motivation to make the asserted combination.

Additionally, the answering machine of Tverskoy is technically inconsistent with the real-time communication system of Alexis. A person of ordinary skill in the art would not be motivated to look to the real-time communications system of Alexis to modify the answering machine of Tverskoy. The answering machine of Tverskoy allows a user to retrieve a message at a later time. This time-shifting aspect of the answering machine of Tverskoy would be thwarted by the real-time communication system of Alexis. In particular, the real-time communication system of Alexis requires both the calling party and the called party to be available at the time of the transmission. By contrast, Tverskoy records and sends a voicemail to the user, precisely because the user is not available to answer a call at that moment.

The Final Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the answering machine of Tverskoy by providing Voice over Internet Protocol (VoIP) calls as taught by Alexis "so that the cost for the call can be lowered when compared with conventional telephone calls." *See Final Office Action*, p. 4, paragraph 5. However, Appellant notes that Tverskoy is directed to an answering machine, and the cost of the call would largely be irrelevant to the answering machine of Tverskoy, since a called party would not be concerned with the cost of the received call. The suggested motivation provided by the Final Office Action does not provide a reasonable basis for modifying the answering machine of Tverskoy.

The cited references fail to provide a suggestion or motivation to make the asserted combination. Further, Tverskoy and Alexis are technically inconsistent. Thus, the asserted combination of the real-time communication system of Alexis with the answering machine of Tverskoy is an impermissible hindsight reconstruction based on the disclosure of present application. Therefore, the Examiner has failed to meet his burden or to provide any basis to support a *prima facie* case of obviousness, and the rejection of claims 21-27 over the asserted combination of Tverskoy and Alexis should be withdrawn. Reconsideration and notice to that effect is requested.

Claim 21 is allowable over the asserted combination of Tverskoy and Alexis. Therefore, claims 22-27 are allowable, at least by virtue of their dependency from allowable claim 21.

**D. CLAIMS 29 AND 30 ARE ALLOWABLE OVER THE ASSERTED COMBINATION OF TVERSKOY AND ALEXIS**

Appellant traverses the rejection of claims 29 and 30 under 35 U.S.C. §103(a) over the asserted combination of U.S. Patent No. 6,341,160 ("Tverskoy") and U.S. Patent Publication No. 2004/0072544 ("Alexis") at page 3, paragraph 5 of the Final Office Action.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *M.P.E.P.* §2143. Additionally, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Final Office Action acknowledges that combining a VoIP feature to the answering machine would not have been obvious in light of Alexis. *See Final Office Action*, p. 10, paragraph 6. However, the Final Office Action states that the VoIP call is from a calling party and therefore it is the calling party's device that has the VoIP feature. *See Final Office Action*, p. 10, paragraph 6. However, Appellant notes that the answering machine of Tverskoy is not

equipped to receive VoIP calls. Tverskoy discloses that the answering machine is capable of transmitting and receiving information over a plain old telephone service (POTS) line or an Integrated Services Digital Network (ISDN) line. *See Tverskoy*, col. 2, lines 23-38. Tverskoy discloses that the answering machine may call an Internet service provider (ISP) via the public switched telephone network to access the user's email account. *See Tverskoy*, col. 2, lines 39-47. However, Tverskoy fails to disclose or suggest an answering machine that is capable of answering VoIP calls. The Final Office Action asserts:

The answering machine of Tverskoy in [sic] not modified in any way with the VoIP feature. Since it is well known in the art to use VoIP to initiate calls as taught by Alexis then the Examiner believes that it would have been obvious to allow the caller of Tverskoy to initiate a call using VoIP to call the called party of Tverskoy...

*See Final Office Action*, p. 10, paragraph 6 (emphasis added).

Claim 29 recites a computer readable medium having computer readable data to answer an incoming telephone call from a calling party, where the incoming telephone call is a Voice over Internet Protocol call. Appellant notes that claim 29 is directed to answering a VoIP call. Whether or not a caller may initiate a VoIP call is irrelevant to whether the answering machine of Tverskoy can answer a VoIP call. The answering machine of Tverskoy is not equipped to send or receive VoIP calls.

Contrary to the assertion in the Final Office Action that the answering machine of Tverskoy is not modified in any way, the asserted combination requires combining a VoIP feature to the answering machine of Tverskoy, which the Final Office Action acknowledges would not have been obvious in light of Alexis. *See Final Office Action*, p. 10, paragraph 6, lines 4-5. Thus, the asserted combination of Tverskoy and Alexis would not have been obvious in light of the disclosures of Tverskoy and Alexis, and the rejection of independent claim 21 over the asserted combination of Tverskoy and Alexis is improper and should be withdrawn.

Moreover, Tverskoy is directed to an answering machine to store a voice message from a caller and to transmit messages to a remotely accessible user account. *See Tverskoy*, Abstract. Tverskoy discloses that the answering machine includes a control system to call an Internet service provider (ISP) of the user, to transmit a user name and password to the ISP, and to

generate an email message associated with a voice message, including an attachment containing a digital representation of the voice message. *See Tverskoy*, col. 3, line 13-31, col. 4, line 15-31, col. 4, line 19-21, and col. 4 line 62- col. 5, line 4. However, the Final Office Action acknowledges that Tverskoy does not teach that the call comprises a Voice over Internet Protocol (VoIP) call. *See Final Office Action*, p. 3, paragraph 5.

By contrast, Alexis is directed to a communication device for hosting land-line, wireless and Internet telephone calls. *See Alexis*, Abstract. Alexis discloses a communication system 100 that allows a user to place a call over a public switched telephone network or over a wireless communication network by entering a predetermined code (*See Alexis*, p. 3, paragraph 0032) or based on an automatic determination by the interface circuitry (*See Alexis*, p. 3, paragraph 0033). Alexis discloses interface circuitry that connects the communication device for a public switched telephone network call or for a wireless network call in response to the input of a predetermined code before or after the user enters a telephone number. *See Alexis*, p. 4, paragraph 0041. Alexis states that a user may place three types of calls: a landline (public switched telephone network) call, a wireless network call, and a Voice over Internet Protocol call. *See Alexis*, p. 6, paragraphs 0049 and 0051.

While Alexis discloses interface circuitry to transmit and receive Voice over Internet Protocol (VoIP) calls, Alexis is directed to an entirely different problem than Tverskoy, namely real-time communications (Alexis) versus voice-mail message access (Tverskoy). Alexis is directed to facilitating two way real-time communications between the user and a caller over a public switched telephone network, over wireless communications networks, and via the Internet. *See Alexis*, Abstract, p. 1, paragraphs 0004 and 0007, p. 2, paragraph 0030, p. 4, paragraph 0041, p. 6, paragraphs 0049-0051, and p. 15, paragraph 0165, for example. By contrast, Tverskoy is directed to providing user access to voice mail messages. *See Tverskoy*, Abstract, col. 1, lines 6-9, col. 3 line 47 through col. 5, line 13.

Neither Tverskoy nor Alexis provide any motivation to make the asserted combination. Tverskoy fails to disclose or suggest VoIP calls. The real-time communication system of Alexis fails to disclose any type of voice messages, except in the context of instant messages.

Accordingly, the cited references fail to provide any suggestion or motivation to make the asserted combination.

Additionally, the answering machine of Tverskoy is technically inconsistent with the real-time communication system of Alexis. A person of ordinary skill in the art would not be motivated to look to the real-time communications system of Alexis to modify the answering machine of Tverskoy. The answering machine of Tverskoy allows a user to retrieve a message at a later time. This time-shifting aspect of the answering machine of Tverskoy would be thwarted by the real-time communication system of Alexis. In particular, the real-time communication system of Alexis requires both the calling party and the called party to be available at the time of the transmission. By contrast, Tverskoy records and sends a voicemail to the user, precisely because the user is not available to answer a call at that moment.

The Final Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the answering machine of Tverskoy by providing Voice over Internet Protocol (VoIP) calls as taught by Alexis "so that the cost for the call can be lowered when compared with conventional telephone calls." *See Final Office Action*, p. 4, paragraph 5. However, Appellant notes that Tverskoy is directed to an answering machine, and the cost of the call would largely be irrelevant to the answering machine of Tverskoy, since a called party would not be concerned with the cost of the received call. The suggested motivation provided by the Final Office Action does not provide a reasonable basis for modifying the answering machine of Tverskoy.

The cited references fail to provide a suggestion or motivation to make the asserted combination. Further, Tverskoy and Alexis are technically inconsistent. Thus, the asserted combination of the real-time communication system of Alexis with the answering machine of Tverskoy is an impermissible hindsight reconstruction based on the disclosure of present application. Therefore, the Examiner has failed to meet his burden or to provide any basis to support a prima facie case of obviousness, and the rejection of claims 29 and 30 over the asserted combination of Tverskoy and Alexis should be withdrawn. Reconsideration and notice to that effect is requested.



Claim 29 is allowable over the asserted combination of Tverskoy and Alexis. Therefore, claim 30 is allowable, at least by virtue of its dependency from allowable claim 29.

For at least the foregoing reasons, Appellant respectfully submits that the present application is in condition for allowance and reconsideration and notice to that effect is respectfully requested.

**VIII. CLAIMS APPENDIX (37 C.F.R. § 41.37(c)(1)(viii))**

The text of each claim involved in the appeal is as follows:

1. (Previously Presented) A messaging method comprising:
  - receiving an indication of a call from a calling party to a called party;
  - answering the call at a premises of the called party;
  - prompting the calling party to leave a message;
  - saving at least a portion of the message as an audio file;
  - recognizing that the calling party left the message;
  - preparing an outgoing message in response to recognizing that the calling party left the message;
  - attaching the audio file to the outgoing message;
  - addressing the outgoing message to a network node associated with a unified messaging mailbox of the called party; and
  - initiating sending of the message and the audio file from the premises to the network node;wherein the call comprises a Voice over Internet Protocol call.
2. (Original) The method of claim 1, further comprising:
  - disconnecting from the call;
  - prompting a modem to dial a telephone number associated with an Internet Service Provider;
  - recognizing that a connection exists with the Internet Service Provider; and
  - outputting information representing the outgoing message for delivery via the connection.
3. (Original) The method of claim 2, further comprising outputting a username and password to the Internet Service Provider to gain access to an account of the called party.

4. (Original) The method of claim 1, further comprising:  
maintaining a notification list including at least one calling party;  
receiving identification information associated with the call and identifying the calling party; and  
determining that the calling party is the at least one calling party.
5. (Canceled).
6. (Original) The method of claim 1, wherein the outgoing message has a format selected from the group consisting of an electronic mail message format, a mobile alert format, an IM format, an SMS format, an EMS format, and an MMS format.
7. (Original) The method of claim 1, further comprising utilizing a modem device to send the outgoing message, wherein the modem device is selected from the group consisting of a cable modem, a dial-up modem, a wireless modem, a satellite modem, and an xDSL modem.
8. (Original) The method of claim 1, further comprising:  
determining that a data connection exists; and  
utilizing the data connection to send the outgoing message.
9. (Original) The method of claim 1, wherein the messages comprises a multi-modal message having an audio component and a non-audio component.
10. (Original) The method of claim 1, further comprising converting the audio file into an unencoded text format.
11. (Previously Presented) A messaging system, comprising:  
a housing component at least partially defining an enclosure;  
a network interface operable to form at least a portion of a communication link between a remote node of a network and a component located within the enclosure;

a call awareness trigger communicatively coupled to the network interface and operable to recognize a signal indicating an incoming call from a calling party;  
a call answering mechanism operable to answer the incoming call and to prompt the calling party to leave a message;  
a memory operable to store an audio file representing the message;  
a messaging engine operable to compose an outgoing message, to attach the audio file to the outgoing message, and to initiate communication of the outgoing message to a remote messaging server; and  
a Voice over Internet Protocol engine communicatively coupled to the network interface.

12. (Original) The system of claim 11, wherein the call awareness trigger, the call answering mechanism, the memory, and the messaging engine are located within the enclosure, further wherein the call awareness trigger recognizes a ring voltage signal.

13. (Original) The system of claim 11, further comprising a computer having a housing comprising the housing component.

14. (Original) The system of claim 11, further comprising:  
a telephone station communicatively coupled to a jack associated with the housing component; and  
a modem communicatively coupled to the network interface.

15. (Original) The system of claim 11, further comprising a processor located within the enclosure, the processor operable to execute instructions to effectuate the messaging engine.

16. (Original) The system of claim 11, further comprising:  
a computer jack associated with the housing component, the computer jack operable to interconnect a computer with the component; and  
a processor located within the enclosure.

17. (Original) The system of claim 16, further comprising a computer readable medium having computer-readable data to allow the computer to store a username and password in the

memory, to indicate a messaging address for an intended recipient of the outgoing message, and to indicate an identifier for the remote messaging server.

18. (Original) The system of claim 16, wherein the computer jack comprises a universal serial bus port.

19. (Original) The system of claim 11, further comprising a broadband modem communicatively coupled to the network interface, the broadband modem operable to support an always-on connection to a broader network.

20. (Canceled).

21. (Previously Presented) A method of facilitating unified messaging, comprising:  
communicatively coupling a messaging device to a premises network communicatively coupled to a wide-area communication network;  
communicatively coupling a telephone station at the premises to the messaging device;  
communicatively coupling a computer to the messaging device;  
employing the messaging device to answer an incoming telephone call from a calling party, to play a pre-recorded message that prompts the calling party to leave a message, to record a voice message from the calling party, to compose an electronic mail message in response to the voice message, to attach an audio file representing the voice message to the electronic mail message, and to initiate sending of the electronic mail message via the wide-area communication network;  
wherein the incoming telephone call comprises a Voice over Internet Protocol call.

22. (Original) The method of claim 21, further comprising executing code directing the computer to store a username and password in a memory associated with the messaging device, to indicate a messaging address for an intended recipient of the electronic mail message, and to indicate an identifier for a remote messaging server communicatively coupled to the wide-area network.

23. (Original) The method of claim 21, further comprising:

determining that a data connection exists interconnecting the premises network and a node of the wide-area network; and  
utilizing the data connection to send the electronic mail message.

24. (Original) The method of claim 21, further comprising:  
disconnecting from the incoming telephone call;  
prompting a modem to dial a telephone number associated with an Internet Service Provider;  
recognizing that a connection exists with the Internet Service Provider; and  
utilizing the connection to send the electronic mail message.

25. (Original) The method of claim 21, wherein the audio file has a format selected from the group consisting of a .WAV file, an MP3 file, a .MIDI file, and a .AU file.

26. (Original) The method of claim 21, further comprising addressing the electronic mail message to more than one intended recipient.

27. (Original) The method of claim 21, further comprising attaching a second file to the electronic mail message comprising non-audio information communicated by the calling party.

28. (Canceled).

29. (Previously Presented) A computer-readable medium having computer-readable data to answer an incoming telephone call from a calling party, to play a pre-recorded message that prompts the calling party to leave a message, to record a voice message from the calling party, to compose an electronic mail message in response to the voice message, to attach an audio file representing the voice message to the electronic mail message, and to initiate sending of the electronic mail message; wherein the incoming telephone call comprises a Voice over Internet Protocol call.

30. (Previously Presented) The computer-readable medium of claim 29 wherein the audio file is encoded in an unencoded text format.

**IX. EVIDENCE APPENDIX (37 C.F.R. § 41.37(c)(1)(ix))**

(N/A)

**X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. § 41.37(c)(1)(x))**


(N/A)

**XI. CONCLUSION**

For at least the above reasons, all of the pending claims are allowable and a notice of allowance is courteously solicited. Please direct any questions or comments to the undersigned attorney at the address indicated. Appellant respectfully requests reconsideration and allowance of all claims and that this patent application be passed to issue.

Respectfully submitted,

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Date

  
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